Supreme Court, U.S.
FILED
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No. 05 -

In The

Supreme Court of the United States

PAUL PALMIERI,
Petitioner,

-against-

PAMELA LYNCH a/k/a PAM LYNCH,
and JOHN DOE # 1, in their individual capacities,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did respondents, who are employees of the New York State Department of Environmental Conservation, while conducting a warrantless administrative search of the curtilage of petitioner's residence, under color of state law, violate petitioner's Fourth Amendment rights by entering upon his property, walking across his front yard to a gate in a stockade fence surrounding his property, containing large "No Trespassing" and "Beware of Dog" signs, then opening and passing through the gate, opening and passing through a second gate, walking along the entire length of petitioner's house, climbing onto a wooden deck that is affixed to the rear of petitioner's house, and walking on the deck to a Gazebo located at the back of the deck, in order to inspect wetlands, located in the Great South Bay, 92 feet outwards from the rear boundary of petitioner's property?

2. May the "special needs" exception to the protections of the Fourth Amendment be routinely invoked by a governmental agency whenever it conducts a warrantless administrative search pursuant to a "regulatory scheme"?

3. May the "special needs" exception be invoked by a governmental agency notwithstanding the lack of any need to perform a warrantless administrative search beyond the normal need for law enforcement?

4. May the "special needs" exception be invoked by a governmental agency without any showing that the warrant and probable cause requirement of the Fourth Amendment is impractical?

5. May the "special needs" exception be invoked by a governmental agency without any need to deter criminal activity?

6. May the "special needs" exception be invoked by a governmental agency without any urgency to perform the warrantless administrative search without a warrant?

7. May the "special needs" exception be invoked by a governmental agency against an ordinary law abiding citizen whenever it decides to conduct a warrantless administrative search of the curtilage of his home?

8. Did the petitioner have a diminished expectation of privacy in the entire curtilage of his home merely because the deck in his backyard was "publicly-viewable" by someone in a boat in the Great South Bay?

9. Was the character of respondents' intrusion upon the entire curtilage of petitioner's home minimal because a portion of the deck in his backyard was observable by someone in a boat in the Great South Bay?

10. Did the State's interest in regulating tidal wetlands override petitioner's expectation of privacy in the entire curtilage of his home merely because his backyard backed up against a navigable waterway?

11. Is every warrantless administrative search by a governmental agency pursuant to an environmental regulatory scheme permissible under the "special needs" exception to the protections of the Fourth Amendment?

12. Was the petitioner's subjective expression of an expectation of privacy in the curtilage of his home "reasonable" under the law?

13. Will a warrantless administrative search, under color of law, by a governmental agency ever constitute merely a "technical trespass" lacking the protections of the Fourth Amendment?

LIST OF PARTIES

The parties are the petitioner, Paul Palmieri, and the respondents, Pamela Lynch a/k/a Pam Lynch, and John Doe #1, in their individual capacities, defendants-respondents.

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The opinion of the Second Circuit Court of Appeals, the court below, is reported at *Paul Palmieri v. Pamela Lynch*, 392 F.3d 73, 2004 U.S. App. LEXIS 25468 (2d Cir. 2004). The opinion of the U.S. District Court, Eastern District of New York is not reported.

DATE JUDGMENT ENTERED

The Judgment of the U.S. District Court, Eastern District of New York, is dated September 9, 2003. The Mandate of the Second Circuit Court of Appeals is dated May 18, 2005.

DATE OF ORDER DENYING REHEARING

The Order of the Second Circuit Court of Appeals denying rehearing is dated May 10, 2005.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The constitutional provision involved is the Fourth Amendment to the U.S. Constitution which provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The statutes involved are 42 U.S.C. §§ 1983 and 1985(3) which provide:

> Section 1983. Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief